

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 26<sup>th</sup> June, 2018

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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I.A. No.01 of 2018 in RFA No.10 of 2017

**Appellants** : 1. Nil Kumar Dahal,  
Aged about 59 years,  
Son of Late Devi Prasad Dahal,  
R/o Raley,  
East Sikkim.

2. Durga Prasad Dahal,  
Aged about 57 years,  
Son of Late Devi Prasad Dahal,  
R/o Raley,  
East Sikkim.

**versus**

**Respondents** : 1. Indira Dahal,  
W/o Late Devi Prasad Dahal,  
R/o Raley,  
East Sikkim.

2. The District Magistrate,  
District Collectorate Office,  
Sichey, Gangtok,  
East Sikkim.

3. The Revenue Officer,  
District Collectorate Office,  
Sichey, Gangtok,  
East Sikkim.

4. Miss Agarata Sharma,  
D/o Late Bal Krishna Sharma,  
Represented by her guardian  
Mrs. Devi Kala Sharma,  
R/o Raley,  
East Sikkim.

Application for condonation of delay in filing Appeal  
under Order XL1 Rule 3A of the Code of Civil  
Procedure, 1908 read with Section 5  
of the Limitation Act, 1963

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**Appearance**

Mr. A. Moulik, Senior Advocate with Mrs. K. D. Bhutia and Mr. Ranjit Prasad, Advocates for the Appellants.

Mr. Jorgay Namka, Ms. Panila Theengh and Ms. Tashi Doma Sherpa, Advocates for the Respondent No.1.

Mrs. Pollin Rai, Assistant Government Advocate for the State-Respondents No.2 and 3.

Ms. Karma Yangchen Bhutia and Ms. Kunzang Choden Lepcha, Advocates for Respondent No.4.

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## O R D E R

Meenakshi Madan Rai, J.

**1.** The instant Application under Order XL1 Rule 3A of the Code of Civil Procedure, 1908 (for short "CPC"), seeks condonation of 6 (six) days delay in filing the Appeal, which assails the Judgment and Decree in Title Suit No.08 of 2011, dated 26-07-2017, of the Learned District Judge, Special Division – I, Sikkim at Gangtok.

**2.** The grounds urged by learned Senior Counsel for the Appellant were that the Appeal was to have been filed within 90 (ninety) days as provided in Article 116(a) of the Limitation Act, 1963, thus requiring the Appeal to be filed on 24-10-2017, instead of 30-10-2017, the day on which it came to be filed. The delay has been computed as 6 (six) days for the reasons enumerated hereinbelow;

- (i) On 01-08-2017, an application was made for a copy of the impugned Judgment which was ready on 18-08-2017.
- (ii) On 21-09-2017, when the Appeal came to be filed, a photocopy of the certified copy of the impugned

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Judgment was submitted, the certified copy having been misplaced on account of repairs in the Chambers of Learned Senior Counsel.

- (iii) The defect, thus, having been pointed out by the Registry, another certified copy of the Judgment was sought on 22-09-2017 from the Learned Trial Court which however was prepared only on 26-10-2017, 34 (thirty four) days after the application was made.
- (iv) On 28-10-2017, the certified copy was handed over to the Appellants' Counsel and submitted to the Registry. Defects detected again were cured and resubmitted on 30-10-2017.

**3.** Learned Senior Counsel further sought to clarify that on the first occasion when the defects were pointed out remedial measures were taken by making an application for a second copy before the learned Trial Court. 34 (thirty-four) days was taken by the concerned Office to make the copy available. Hence, the said period infact ought to be granted as grace period the delay having been caused by a third agency and not the Appellants.

**4.** The contra contention raised by Learned Counsel for the Respondent No.1 was that although there was a delay of 6 (six) days in filing the Appeal, the Appellants failed to submit an application for condonation of delay deliberately not bringing the fact of the said delay to the notice of this Court and infact stating that the Appellants are well within the prescribed period and there is no delay in filing the instant Appeal by the Appellants.

**5.** Considered.

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6. Section 12(2) of the Limitation Act, 1963, provides as follows;

**"12. Exclusion of time in legal proceedings.— (1) .....**

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

....."

Bearing this provision of law in mind, it is evident that on pronouncement of the impugned Judgment and Decree on 26.07.2017 and on an application seeking a copy thereof on 01.08.2017, the copy was made available on 18.08.2017. This means exclusion of the period till 18.08.2017. The Appeal undoubtedly first came to be filed on 21.09.2017 but with the curing of all defects, it was only subsequently filed on 30.10.2017. The clarification that the first certified copy of the Judgment was lost holds no water, as no provision has been made for computing limitation for carelessness of the counsel.

7. This Court in **Tara Kumar Pradhan vs. Yuba Kumar Pradhan**<sup>1</sup>, has clearly pointed out that Application or Regular First Appeal cannot be deemed to be filed, unless all defects are cured. There is no reason for this Court to differ from the said observation for the purposes of the instant matter. Nonetheless, since the Appellant ought not to suffer on account of what transpired in the chambers of his counsel and keeping in mind the paramount

<sup>1</sup> I.A. No. 1 of 2016 in RFA No.16 of 2016 dated 19.04.2017

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importance of handing out substantial and even handed justice, this Court exercises its discretion in condoning the delay of 6 (six) days.

**8.** I.A. No. 1 of 2018 is disposed of accordingly.

Sd/-  
**( Meenakshi Madan Rai )**  
**Judge**  
26-06-2018

Approved for reporting : **No**

Internet : **Yes**